IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REFERENCE NO. 10 OF 1992

Shri Gopinath s/o. Ganpatrao Pensalwar, Age 50 yrs. Occp.Business, R/o. Latur & Udgir, Tq.Udgir, Dist.Latur.	: Appellant. (Org.Plaintiff)
V/s.	
1. The State of Maharashtra, through the Collector, Dist. Latur.	
2. Tahsildar, Latur.	: Respondents. (Org.Defendants)

None for the Appellant and the Respondents.

CORAM : R.M.LODHA, S.A.BOBDE AND S.B.DESHMUKH,JJ.

DATED : 06TH OCTOBER, 2006.

ORAL JUDGMENT : (Per R.M.Lodha,J.)

. The Civil Judge, Senior Division, Latur has made the Civil Reference to this Court under Section 13 of the Bombay Revenue Jurisdiction Act, 1876 (for short, 'the Act of 1876'). He has expressed his doubt whether he is precluded by the Act of 1876 from taking cognizance of the suit for perpetual injunction restraining the defendants from collecting or recovering the non-agricultural charges from the plaintiff for the

years 1968 to 1989, as claimed by the defendants in their Notices dated 13th March, 1990 and 23rd March, 1990.

2. Gopinath filed the suit against the State of Maharashtra through the Collector, Dist.Latur and the Tahsildar, Latur in the Court of the Civil Judge, Senior Division, Latur, praying for perpetual injunction against the defendants from collecting or recovering non-agricultural charges for the years 1968 to 1989 from the plaintiff, as claimed in the Notices dated 13th March, 1990 and 23rd March, 1990 and restraining them from increasing or enhancing non-agricultural assessment charges for the year 1968 to 1989. In the plaint, the plaintiff averred that he was owner in possession of the suit plot bearing city survey No.5442 situate at Latur. He claims to have purchased the said plot for the residential as well as commercial purposes by the registered sale deed. The said plot admeasures 3983 square meters. Out of which, according to the plaintiff, 1000 square meters is under residential and commercial use and the remaining part of the plot is open and vacant. The said plot is said to have been converted into non-agricultural land in the year, 1968. The plaintiff has stated in the plaint that he has paid all non-agricultural assessment charges upto the year

1989 as per the assessment made by the concerned officer. However, the Tahsildar Latur (Defendant No.2) issued a demand notice of non-agricultural assessment charges of Rs.74,304/- for the period from 11.05.1968 to 31.07.1990. Three days time was given to the plaintiff to deposit the said amount failing which it was stated in the Notice that appropriate steps for recovery of the amount will be taken. Thereafter, the Tahsildar Latur issued another notice for attachment of the plaintiff's property for want of payment of Rs.74,304. The plaintiff has set up the case that the demand made in the Notice and the threat to recover the said amount by the Tahsildar, Latur is wholly illegal and contrary to law necessiting the reliefs from the Civil Court in the suit filed by him.

3. The Act of 1876 came into force on 28th March, 1876. It was enacted to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land revenue and for other ancillary purpose. Section 4 provides bar of certain suits to specific court thus :

> "4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :

. (a) claims against the Government, relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act No.III of 1874 or any other law for the time being in force, or of any other village officer or servant, or

. claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

. suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by the State Government or any officer duly authorized in that behalf, or

. claims against the Crown relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by the Provincial Government or any officer duly authorized in that behalf to be held for service;

(b) objections --
. to the amount or incidence of any assessment of land-revenue authorised by the Provincial Government, or

. to the mode of assessment, or to the principle on which such assessment is fixed, or

. to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

. (c) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance by the Provincial Government or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants;

. claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue;

. (d) claims against the Crown --

(1) to be entered in the revenue-survey or settlement-records or village-papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue-survey or settlement or

(3) to have any such entry either omitted or amended;

. (e) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act IV of 1868 or any other law for the time being in force;

. (f) claims against the Crown --
to hold land wholly or partially free from payment of land-revenue or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized by the Provincial Government under the provisions of any law for the time being in force, or

. respecting the occupation of waste or vacant land belonging [to the Crown;

. (g) claims regarding boundaries fixed under Bombay Act No.I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks :

. Provided that, if any person claim to hold wholly or partially exempt from payment of land-revenue under --

. (h) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, expressly confirming such an exemption on the ground of its being shown a public record, or of its having existed for a specified term of years, or

. (i) an instrument or sanad given by or by order of the Provincial Government under the Bombay Act No.II of 1863, section 1, clause

first, or Bombay Act No.VI of 1863, section 2, clause first, or

. (j) any other written grant by the British Government expressly creating or confirming such exemption, or,

. (k) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, Chapter X, or under Act No.XI of 1852, which declares the particular property in dispute to be exempt, such claim shall be cognizable in the Civil Courts."

4. Section 5 saves certain classes of suits entertainable by Civil Courts. It reads thus :

"5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :

. (a) suits against the Crown to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorised in that behalf by the State Government or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part or that the plaintiff, or the person whom he represents is not the person liable for such amount ;

. (b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of revenue-survey or settlement or in any village-papers;

. (c) suits between superior holders or occupants and inferior holders or tenants, regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (g), shall be held to prevent the Civil Courts from entertaining suits, other than suits against the

> Government for possession of any land being a whole survey-number or a recognized share of a survey-number;
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> and nothing in section 4 shall be held to prevent the Civil Courts in the districts mentioned in the Second Schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March, 1876, they could have exercised over claims against the Government --
>
> > (a) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No.III of 1874 or any other law for the time being in force, or of any other village-officer or servant;
> >
> > (b) to hold land wholly or partially free from payment of land-revenue;
> >
> > (c) to receive payments charged on, or payable out of, the land -revenue."

5. Section 11 provides that certain suits shall not be entertained by the Civil Courts unless the plaintiff has exhausted the right of appeal. Section 11 reads thus :

> "11. No Civil Court shall entertain any suit against the Government on account of any act or omission of any Revenue-officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present."

6. Section 13 empowers Civil Judge to refer

questions of jurisdiction to the High Court, where he doubts, whether he is precluded by this Act from taking cognizance of the suit. Section 13 is thus :

> "13. If in any suit instituted, or in any appeal presented, in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.
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> . The High Court may order the Judge making the reference either to proceed with the case or to return the plaint.
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> . The order of the High Court on any such reference shall be subject to appeal to the Supreme Court and, save as aforesaid, shall be final]."

7. Section 14 inter-alia provides that every reference under section 13 shall be heard by a Bench consisting of not less than three Judges.

8. The defendants have traversed the averments made in the plaint by filing the written statement. Interalia, the plea has been set up that the recovery proceedings by the Tahsildar, Latur have been initiated as per the procedure prescribed in the Maharashtra Land Revenue Code and the Rules framed thereunder and the remedy against the order of the Tahsildar is provided in the Maharashtra Land Revenue Code.

9. Section 247 of the Maharashtra Land Revenue Code

provides for the Appeal to the Appellate Authorities. Section 247 reads thus :

> "247. (1) In the absence of any express provisions of this Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column I of the Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision of order of the officer specified in column 1 of the said Schedule :
>
> Provided that, in no case the number of appeals shall exceed two,
>
> (2) When on account of promotion of change of designation, an appeal against any decision or order lies under this section to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code."

10. From the Schedule ‘E’ under section 247, it appears that the order of Tahsildar, is amenable to appeal before Sub-Divisional Officer or such Assistant or Deputy Collector as specified by the Collector in this behalf.

11. The question is whether the suit framed by the plaintiff challenging the order of Tahsildar is barred under Section 11 of the Act of 1876 through the said order is appellable.

12. It is pertinent to notice here that based on the pleadings of the parties, an issue has been framed by the trial court : Whether the order of the Tahsildar Latur about the enhancement of non-agricultural charges is without jurisdiction ?

13. Section 11 of the Act of 1876 can not, in our view, be said to create a bar in entertaining the suit relating to an action of the Revenue Officer, where he purports to do an act which is without jurisdiction. It goes without saying that where an authority acts without jurisdiction or purports to pass an order, that is without jurisdiction, such order is void, nonest and nullity. We do not think it is necessary for us to deal with this aspect at length, as we are benefited by the Full Bench decision of this Court in the case of **Abdullamiyan Abdulrehman vs. The Government of Bombay, Vol.XLIV (1942) the Bombay Law Reporter 577.** The Full Bench of this Court had an occasion to consider section 11 of the Act of 1876. The Full Bench considered few decisions of this court in the case of **Surannanna vs. Secretary of State for India, 2 Bom.L.R.261; Malkajeppa vs. Secretary of State for India, 14 Bom.L.R.332; Rasulkhan Hamadkhan vs. Secretary of State for India, 17 Bom.L.R.513; Dhanji vs. The Secretary of State, 23**

Bom.L.R.279; Patdaya vs. Secretary of State, 25 Bom.L.R.1160; Sulleman vs. Secretary of State, 30 Bom.L.R.431 and Manibhai vs. Nadiad City Municipality, 28 Bom L.R.1465, and concluded the legal position thus :

> "Those cases have established the principle that where an authority which purports to pass an order is acting without jurisdiction, the purported order is a mere nullity, as Sir Lawrence Jenkins puts it, it is mere waste paper; and it is not necessary for anybody who objects to that order, to apply to set it aside. He can rely on its invalidity when it is set up against him, although he has not taken steps to set it aside. The Advocate General does not dispute the proposition established by those cases, but he says that the principle does not apply to S.11 of the Bombay Revenue Jurisdiction Act, which operates when an appeal is possible, and not merely when it is obligatory. I find it difficult to see why the principle should not apply. If the true principle be, as those cases decided, that an order, or what purports to be an order, passed without jurisdiction, is a nullity, it cannot give rise to any right whatever, not even to a right of appeal."

14. It was held by the Full Bench that on a strict use of language an order which is invalid, is not an order. It was further held that where the revenue officer purports to do an act or pass an order which is invalid, his action does not operate to raise a bar under section 11 of the Act of 1876.

15. We are in full agreement with the view of the Full Bench in the case of Abdullamiyan Abdulrehman (supra).

16. The issue already having been raised by the trial court as to whether the order of Tahsildar, Latur about the enhancement of the non-agricultural charges is without jurisdiction, by no stretch of imagination, can it be said that the Civil Court has no jurisdiction. In this fact situation, section 11 cannot be said to be a bar in entertaining the suit filed by the plaintiff before the Civil Court.

17. We answer to the Reference thus :

. Section 11 of the Bombay Revenue Jurisdiction Act, 1876 in the light of challenge

to the order of the Tahsildar, Latur, being illegal and without authority of law is not a bar in entertaining the Regular Civil Suit No.224 of 1990.

18. Order accordingly.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

(S.B.DESHMUKH,J.)